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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 RICHARD LEE JOHNSEN,

9 Plaintiff,

10 v.

11 HENRY TAMBE,

12 Defendant.

C19-141 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) The Court has received back an envelope addressed to plaintiff pro se
16 Richard Lee Johnsen at the Skagit County Justice Center, marked “Not In Custody” and
17 “Return to Sender.” *See* docket no. 41. The envelope contained the service copy of the
18 Report and Recommendation (“R&R”) of the Honorable Michelle L. Peterson, docket
19 no. 40. The R&R states that, although mail sent by the Court to plaintiff was previously
20 returned as undeliverable, *see* docket no. 38, plaintiff appears to have received a copy of
21 defendant’s motion for summary judgment, docket no. 35, which the R&R recommends
22 granting, as well as the notice defendant was required to provide pursuant to *Rand v.*
23 *Rowland*, 154 F.3d 952 (9th Cir. 1998), docket no. 32. *See* R&R at 2 n.1 (docket no. 40).
Having reviewed the docket for Skagit County Superior Court Case No. 17-1-01183-29,
in connection with which plaintiff was previously in custody, the Court is not persuaded
that plaintiff received the *Rand* notice or defendant’s motion for summary judgment.
Plaintiff appears to have been released from the Skagit County Justice Center on July 16,
2019. The *Rand* notice was not, however, mailed to plaintiff at the Skagit County Justice
Center until August 23, 2019, and defendant’s motion for summary judgment was sent
thereafter, on August 26, 2019. The record does not affirmatively reflect that plaintiff
received either of those documents. If defendant can verify that plaintiff was actually

1 served with the Rand notice and the pending motion for summary judgment, he shall file
2 a declaration within seven (7) days of the date of this Minute Order. If not, defendant
3 shall take steps to locate plaintiff and arrange for service of the Rand notice, as well as
4 his motion, file a revised declaration of service, and renote his motion for an appropriate
5 date. The R&R, docket no. 40, is VACATED, and this matter is REFERRED back to
6 Magistrate Judge Peterson for further proceedings.

7 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
8 record and to Magistrate Judge Peterson. The Clerk shall also send a copy of this Minute
9 Order to Dennis Rollin Scott, who represents plaintiff in Skagit County Superior Court
10 Case No. 17-1-01183-29, at the following address: 1004 7th Street, Suite 208, Anacortes,
11 WA 98221-4133.

12 Dated this 16th day of October, 2019.

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William M. McCool
Clerk

s/Karen Dews
Deputy Clerk